

**NOTICE OF PROPOSED REVISION OF REGULATIONS AND
STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board**

DATE: May 21, 2004

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: PROPOSED AMENDMENT, ADOPTION AND REPEAL OF
STATE PERSONNEL BOARD REGULATIONS AFFECTING
EQUAL EMPLOYMENT OPPORTUNITY AND DISCRIMINATION
COMPLAINT POLICIES AND PROCEDURES

AUTHORITY:

Under the authority established in Government Code § 18701, the State Personnel Board (SPB) proposes to amend, adopt, and repeal sections of Title 2, Division 1 of the California Code of Regulations relating to Equal Employment Opportunity and Discrimination as outlined in this notice.

REFERENCE:

These regulations implement, interpret, and/or make specific Government Code §§ 11092, 11092.5, 11139.6, 12926, 12926.1, 12940 -12951, 18500(c)(5), 18523, 18675, 18952, 18701, 19230 -19237, 19240 -19244, 19241, 19700 -19706, and 19790 -19799.

PUBLIC HEARING:

Date and Time: July 7, 2004
1:00 to 2:00 pm.

Place: 801 Capitol Mall
Sacramento, CA 95814

Purpose: To receive written or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, July 5, 2004, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed regulatory changes at the hearing. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the forty-five (45) day comment period.

Direct written comments may be submitted to Ted Edwards at the State Personnel Board, 801 Capitol Mall, MS 12, Sacramento, CA 95814, or to tedwards@spb.ca.gov, or fax comments to his attention at (916) 651-9016.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/
CONTACT PERSONS:**

Copies of the express terms of each proposed action, Statement of Reasons, and all of the information upon which each proposal is based are available upon request from SPB's contact person. The Rulemaking Files and related documents are available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed actions should be directed to Ted Edwards as specified above. Questions regarding the regulatory process in conjunction with these proposals should be directed to Elizabeth Montoya, the backup contact person, at the State Personnel Board, (916) 654-0842 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text of either proposal as a result of comments received during the public comment period, SPB will make the full text of the changed regulation(s) available for at least fifteen (15) days before the date the regulation(s) is permanently adopted.

DOCUMENTS RELIED UPON

Americans with Disabilities Act of 1990 (Public Law 101-336)

Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 Et seq.

"Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity", Federal Register, October 30, 1997

“Report on the Status of the State Discrimination Complaint Process”, prepared by Office of Civil Rights, State Personnel Board, February 2002

Connerly v. State Personnel Bd. (2001) 92 Cal. App. 4th 16, hereafter referred to as Connerly v. SPB

Hazelwood School District et al., v. United States, 433 U.S. 299, (1972), hereafter referred to as Hazelwood v. U.S.

Johnson v. Santa Clara Transportation Agency, 480 U.S. 616 (1987), hereafter referred to as Johnson v. Santa Clara

Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989), hereafter referred to as Wards Cove v. Atonio

Wygant v. Jackson Board of Education, 476 U.S. 267 (1986), hereafter referred to as Wygant v. Jackson

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Government Code §§ 11092 and 11092.5 require each State agency to maintain statistical tabulations for the racial categories of Filipino and Pacific Islanders.

Government Code § 11139.6 prohibits State and local government agencies from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, education or contracting.

Government Code §§ 12926 and 12926.1 enumerate the terms and definitions used by the Department of Fair Employment and Housing (DFEH) in connection with unlawful employment and housing practices, which may be broader than those required by the federal Americans with Disabilities Act.

Government Code §§ 12940 Et seq. prohibits unlawful employment practices, unless based upon a bonafide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of California. These provisions prohibit discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person in connection with employment or employment privileges such as training and compensation.

Government Code § 18500(c)(5) provides that the State civil service personnel system shall treat applicants and employees equitably and without regard to political affiliation, race, color, sex, religious creed, national origin, ancestry, marital status, age, sexual orientation, disability, political or religious opinion or non job-related factors.

Government Code § 18523 defines class as a group of positions sufficiently similar with respect to duties and responsibilities that the same title may be used for them, the same test of fitness may be used, and the same minimum qualifications may be required and the same schedule of compensation may be applied.

Government Code § 18675 authorizes SPB to investigate or hear a complaint of discrimination, harassment, or retaliation of a State employee, and, upon consideration of applicable current laws and decisions, arrive at a decision.

Government Code § 18952 specifies that an employee may appeal to the Board in writing if she/he feels aggrieved at any action by a superior or fellow employee that discouraged, or in any manner hindered or prevented him/her from taking an examination. SPB is authorized to investigate such an appeal and take action as necessary.

Government Code § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code §§ 18500 et seq.).

Government Code §§ 19230 Et seq. enumerates the State's policies and requirements related to the employment of qualified individuals with a disability and provides reasonable accommodation to known physical or mental limitations. Government Code § 19231 defines the meaning of terms used in connection with these policies. Government Code § 19232 requires State agencies to establish an affirmative action program to ensure individuals with a disability access to positions on an equal and competitive basis with the general population, which includes setting goals and timetables. Government Code § 19233 provides the Board authority to outline specific actions to improve representation of persons with disability, to ensure equal and fair employment practices, and to survey by job category and salary so as to establish guidelines and goals and timetables.

Government Code §§ 19240 Et seq. provides SPB responsibility for the Limited Examination and Appointment Program (LEAP), an alternative examination and appointment method that facilitates the hire of persons with disabilities in State

civil service positions where accommodations can be provided and prohibitive physical requirements are not mandated. These sections establish the parameters and requirements of the LEAP.

Government Code § 19241 authorizes the Board to establish rules and procedures for the implementation of the Limited Examination and Appointment Program (LEAP), including the establishment of eligibility criteria for participation, special job classifications, examination techniques, and appointment and appeals procedures.

Government Code §§ 19700 Et seq. prohibits discrimination in State civil service of any person because of sex, race, religious creed, color, national origin, ancestry, marital status, physical or mental disability, or age, and the retaliation of any person who has opposed any unlawful employment practice. Discrimination includes harassment. These provisions specify that an individual may submit a discrimination complaint with the appointing authority or, in accordance with Board rules, with the Board itself, and authorizes SPB to investigate and conduct hearings concerning such complaints and take action upon a finding of discrimination. In addition, these provisions require that hiring and promotions in the civil service conform to the Federal Civil Rights Act of 1964. Title VII of the Act prohibits practices, procedures or policies that have an adverse impact on employees or applicants for employment unless they are justified by business necessity. It also prescribes practices which “tend to deprive” a person of equal employment opportunity, such as preferential treatment for one group of persons over another.

Government Code §§ 19790 Et seq. enumerates the requirements of the State civil service Affirmative Action (AA) Program and delineates SPB’s responsibility for providing statewide advocacy, coordination, enforcement and monitoring of these programs, including the development, implementation, and maintenance of AA and equal employment opportunity guidelines, and the maintenance of statistical information to determine the underutilization of minorities and women. These provisions require each agency to develop an AA plan that includes identification of areas of underutilization for protected groups, an equal employment opportunity analysis, and an explanation of and specific actions for improving the representation of protected groups. Lastly, these provisions require State agencies to establish an effective AA program, including the appointment an affirmative action officer to develop, implement, coordinate, and monitor this program.

The U.S. Supreme Court has affirmed in several cases that a public employer may employ affirmative action plans, which provide for race or gender preferences where essential to remedy the past effects of discriminatory employment practices, Johnson v. Santa Clara and Wygant v. Jackson. Such actions for public employers, such as the State of California, must meet requirements of both Title VII of the Civil Rights Act of 1964 and the Equal Protection clause of the 14th Amendment to the United States Constitution.

The U.S. Supreme Court held in Hazelwood v. U.S. [433 U.S. 299 (1977)] that gross statistical disparities between the composition of the employer's work force and that of the relevant labor force constitutes a prima facie case of a pattern or practice of employment discrimination under Title VII of the Civil Rights Act of 1964. The court held that once a prima facie case was established by statistical work force disparities, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for its action. In addition, Wards v. Atonio, 490 U.S. 642 (1989) emphasizes the importance of making relevant labor force comparison and developing appropriate statistical evidence to establish a prima facie case of discrimination.

In 2001, the California Third District Court of Appeal issued a published decision in Connerly v. SPB, which concluded that establishing employment goals based on race or gender violates principles of equal protection as well as the California Constitution as amended by Proposition 209. The court, however, upheld those statutory provisions that require the collection of statistical data and reporting of underutilization by racial or gender categories in State agencies to monitor employment practices and, under limited circumstances, upheld the provision permitting the SPB to adjust layoff based on a finding of past discrimination.

The proposed regulatory changes respond to: 1) the findings of court decisions and enacted legislation concerning equal employment opportunity programs for State agencies; and 2) the need to improve the discrimination complaint and reasonable accommodation processes. In addition, new regulation is being proposed to establish a Coordinator for each State agency to facilitate the use of LEAP and the hire of persons with disabilities in civil service. The following summarizes the proposed changes:

CCR § 10. Disability Terms- Proposed Amendment to the Regulation

In 2000, AB 2222 (Kuehl/Chapter 1049, Statutes of 2000) amended the State Fair Employment and Housing Act (FEHA) to expand the definition of a person with a disability beyond the definition provided in the federal Americans with

Disabilities Act (ADA) for non-discrimination law enforcement purposes. Under FEHA, a person must have an impairment that “limits” a major life activity, rather than one that “substantially limits” as required under the ADA. In addition, under FEHA, disability determinations are made without regard to mitigating measures, such as glasses, prosthetic devices, and medication. Under the ADA, determinations are made with consideration of mitigating measures. In addition, FEHA specifies that an individual with certain medical conditions is disabled. Accordingly, it is necessary for SPB to adopt the new more liberal definition for use in collecting statistical information on State employees, setting employment goals, and adjudicating discrimination complaints and reasonable accommodation appeals. The proposed revised Regulation 10 adopts the FEHA’s definitions of disability terms.

CCR § 547.58 - Proposed New LEAP Regulation

The Limited Examination and Appointment Program (LEAP) became a permanent special State program to facilitate the employment of persons with disabilities in 1989. A new CCR § 547.58 is proposed to add the requirement that each State department have a LEAP Coordinator to promote use of the program and assist managers and LEAP candidates throughout the hiring and evaluation processes to resolve any problems that may occur. This is important to help ensure that persons with disabilities receive equal employment opportunity within each department.

Proposed Regulations Regarding the State’s Discrimination Complaint and Reasonable Accommodation Processes

The following proposed regulation changes are discussed below as a group because they are the result of a common effort to improve State equal employment opportunity and non-discrimination processes:

CCR §§ 53.2, 54, 54.2, 547, and 547.1 – Proposed Repeal of Current Regulations on State Discrimination Complaint and Reasonable Accommodation Procedures and Corresponding Procedures for Appeals to the SPB;

CCR §§ 547.807 - 547.815 - Proposed New Regulations on State Discrimination Complaint Processes and Appeal Procedures; and

CCR §§ 547.816 - 547.8191 – Proposed New Regulations Regarding State Reasonable Accommodation Processes and Appeal Procedures

In March 2002, following completion of a comprehensive study to evaluate the status of the State's discrimination complaint process, SPB held a public hearing to consider recommendations for improving the process. Many of the recommendations that were adopted involved amending existing regulations and promulgating new regulations to clarify and expand departmental discrimination complaint and reasonable accommodation policies and procedures, and SPB appeal requirements. To implement these recommendations, SPB proposes a new Article 3, Discrimination Complaint Process, CCR §§ 547.807 - 547.815, and a new Article 4, Reasonable Accommodation, CCR §§ 547.816 - 547.819. It is also proposed that current SPB CCR §§ 53.2, 54, 54.2, 547 and 547.1 be repealed, since the proposed new regulations incorporate and expand upon their provisions.

CCR §§ 547.79 - 547.803 - Proposed New and Amended Regulations on Equal Employment Opportunity Policy and the Workforce Analysis Process

In 2001, the California Court of Appeal in Connerly v. SPB held that statutes requiring State departments to set employment goals based on race or sex were in violation of the California Constitution, as amended by Proposition 209. Subsequently, SPB eliminated the requirements for annually setting employment goals for racial/ethnic groups and women and revised the annual State workforce analysis process. The focus of the revised process is on determining the extent to which State departments are providing equal employment opportunity and have non-discriminatory employment practices. This involves identifying underutilization of racial/ethnic and gender groups in occupational categories as an indication of possible employment discrimination, conducting follow up analysis to determine the cause of the underutilization, and developing an action plan to correct or eliminate any non job-related employment barriers. The new and revised regulations are proposed to formally define the State civil service equal employment opportunity policy and terminology, and to provide policy and procedural guidance to State departments for completing the annual workforce analysis process.

CCR §§ 547.804 - 547.806 - Proposed New Regulations for Establishing Employment Goals for Persons with Disabilities and Updating Disability Information for State Employees

Employment goals for persons with disabilities are not affected by the Connerly v. SPB decision and continue to be mandated by Government Code § 19232. In 1995, the Board held a public hearing to consider proposed methodology for establishing employment goals for persons with disabilities.

After considering all input, the Board approved staff recommendations, and guidelines were issued to departments for annually reviewing their representation of employees with disabilities and establishing a departmental employment goal. Currently, these guidelines are included as an appendix at the back of SPB's *Interim Guidelines for Conducting the Annual State Workforce Analysis* (Interim Guidelines). The proposed new Article 2, Employment Goals for Persons with Disabilities, CCR §§ 547.804 - 547.806 will separate procedural guidelines for setting employment goals for persons with disabilities from the other annual workforce analysis guidelines for racial/ethnic and gender groups to better recognize significant differences in analytical methodology, and to give greater recognition and visibility to the requirements for providing equal employment opportunity for persons with disabilities in the State civil service.

IMPACT ON SMALL BUSINESSES:

The proposed regulations will not impact small businesses. The proposed actions would affect only State and applicable local agencies and their employees.

LOCAL MANDATE:

The proposal has no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to Government Code § 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Saving to State Agencies

Any additional cost that the proposed amendment may cause for State and applicable local agencies will be negligible.

Impact on Housing Costs

The proposal will not affect housing costs.

Costs or Savings in Federal Funding to the State

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed actions.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has determined that the proposed actions will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The proposed actions will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES STATEMENT:

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FINAL STATEMENT OF REASONS:

Upon completion, copies of the Final Statement of Reasons for the proposed actions may be obtained from the contact person or the backup contact person.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:

The text of each proposed regulation in underline and strikeout, as well as, the Notice of Proposed Amendment of Regulations, and Statement of Reasons and if prepared and when available for review, the Final Statement of Reasons, will be on SPB's Web site at www.spb.ca.gov.

STATEMENT OF REASONS:

The Board by its authority to promulgate rule under Government Code § 18701 proposes to adopt 22 new and 2 amended State Personnel Board (SPB) regulations to update, clarify and expand equal employment opportunity, discrimination complaint and reasonable accommodation policies and procedures, and to repeal five existing regulations that have been incorporated into the proposed new regulations. The proposal affects regulations included under California Code of Regulations (CCR) Title 2, Division 1, Chapter 1, Sub-chapter 1, General Civil Service Regulations and Sub-chapter 1.7, Equal Employment Opportunity Program. The proposed actions are taken to comply with current State statutory, constitutional and case law requirements concerning equal employment opportunity and non-discrimination, including workforce data

Equal Employment Opportunity and Discrimination Complaint Regulations
May 21, 2004
Page 11 of 11

collection and evaluation of equal employment opportunity activities within State civil service. The proposed regulatory actions make specific reasonable accommodation, LEAP and discrimination complaint requirements, practices and procedures.

Joan Allison, Acting Chief,
Policy Division

Attachment: Text of Proposed Regulations

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations

Article 1. Definitions

§ 10. Disability Terms.

~~(a) “Individual with a disability” means, with respect to an individual (1) having a physical or mental impairment that substantially limits one or more major life activities of such individual; (2) having a record of such impairment; or (3) being regarded as having such an impairment.~~

~~(b) “Physical Impairment” means any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine.~~

~~(c) “Mental Impairment” means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.~~

~~(d) “Major life activities” mean activities that an average person can perform with little or no difficulty, such as walking, speaking, breathing, performing manual tasks, seeing, hearing, learning, caring for oneself, working, sitting, standing, lifting, or reaching, etc.~~

~~(e) “Substantially Limits” means the individual with the disability is: 1) unable to perform a major life activity that the average person in the general population can perform; or 2) significantly restricted as to the condition, manner or duration under which the average person in the general population can perform that same major life activity.~~

NOTE: Authority cited: Sections 18701, 19231, 19241, and 19792, Government Code. Reference: Sections 19230, 19231, and 19240-44, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

(a) As used in this chapter, the terms “physical disability,” “mental disability,” “medical condition,” “limits,” “major life activities,” “reasonable accommodation,” and “undue hardship” have the definitions set forth in Government Code § 12926.

(b) As used in this chapter, an “individual with a disability” means any individual with a physical or mental disability.

(c) Notwithstanding subdivision (a), if the definition of “disability” used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of an individual with a mental or physical disability, or would include any medical condition not included in Government Code § 12926, then that broader protection or coverage shall be deemed incorporated by reference into the definitions set forth in this section.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 12926, 12940, 19230-19237, and 19240-19244, Government
Code and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections
12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations

~~Article 25. Discrimination~~

~~§ 547. Discrimination Prohibition.~~

~~Discrimination in violation of state or federal law shall be prohibited in State employment. All issues relating to alleged violation of Federal or State anti-discrimination laws shall be resolved using the appeal process provided in Sections 54 to 54.23 inclusive.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.~~

*(Provisions in this rule have been incorporated into revised
CCR § 54 and proposed new CCR§ 547.79)*

~~§ 547.1. Procedures for Resolving Discrimination Complaints.~~

~~A complaint against an action, decision, policy or condition which is within the authority of the appointing power to resolve shall be first considered by the appointing power before referral to the Personnel Board. A complaint of discrimination which cannot be resolved by the appointing power, or which is not within the authority of the appointing power to resolve shall be filed with the Personnel Board as an appeal. The executive officer may first attempt to resolve such a complaint informally, or refer it to the board for hearing. Complaints which do not allege discrimination as set forth in Section 547 shall be dealt with through the grievance procedure, if applicable, or filed as an appeal to the board.~~

~~Each complaint must be in writing and state clearly the facts upon which it is based, and the relief requested, in sufficient detail for the reviewing authority to understand the nature of the complaint and who is involved.~~

~~Each appointing power may establish a written procedure through which an employee may obtain consideration for an allegation of discrimination. All such procedures are subject to the approval of the executive officer. Until the appointing power establishes an approved procedure, the standard procedure prescribed by the executive officer shall apply.~~

*(Provisions of this rule have been incorporated into revised
CCR § 54, and proposed new CCR §§ 547.809 and 547.812)*

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter1. State Personnel Board
Subchapter 1. General Civil Service Regulations

Article 28. Limited Examination and Appointment Program

§ 547.58. LEAP Coordinator.

Each appointing power shall assign an employee to serve as a departmental LEAP coordinator to facilitate use of the program within the department. The duties of the coordinator shall include, but not be limited to, the following:

- (a) Promote and encourage use of LEAP within the department;
- (b) Act as a central contact within a department for information about LEAP and the hiring process;
- (c) Monitor LEAP appointments within a department to ensure that the process is working effectively;
- (d) Coordinate the processing of LEAP documentation to the board;
- (e) Assist departmental managers and supervisors with LEAP matters;
- (f) Act as the departmental liaison with the board regarding LEAP; and
- (g) Serve as a resource for LEAP candidates and appointees.

NOTE: Authority cited: Sections 18701 and 19241, Government Code.
Reference: Sections 19240-19244, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.7 Equal Employment Opportunity Program

Article 1. ~~State Work Force~~ Equal Employment Opportunity Policy,
Data Collection and Evaluation

§ 547.79. Diversity, Equal Employment Opportunity, and Non-Discrimination.

It is state civil service policy to promote diversity in the workforce by providing equal employment opportunity to all job applicants and employees based on merit and to prohibit unlawful discrimination in every aspect of personnel policies and employment practices, including recruitment, examining, hiring, promotion, training, work assignments, work environment, and other terms, conditions or privileges of employment. State agencies and departments shall ensure that this policy is fully implemented and that no unlawful discrimination or retaliation is taken against applicants and employees for exercising their rights under this policy.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 11139.6, 12940-12951, 18500(c)(5), 19700-19706, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; Americans with Disabilities Act of 1990, 42 U.S.C. 12211 et seq.

§ 547.80. Definitions.

The following definitions shall be used for ~~work force~~ workforce data collection and evaluation of equal employment opportunity within the state civil service, including those activities related to layoff:

(a) “Class” means a group of similar positions as defined in Government Code Section 18523.

(b) “Diversity” means the variety of job applicants and employees based on differences in their physical, mental, and personal characteristics, opinions, beliefs, culture, and socio-economic status;

(c) “Equal Employment Opportunity” means providing equal access to state jobs, work assignments, training and other employment related opportunities for all qualified job applicants and employees regardless of race, color, ancestry, national origin, sex, marital status, age, religious creed or opinion, political affiliation or opinion, sexual orientation, medical condition, or mental or physical disability by making employment decisions solely on the basis of job-related criteria.

~~(b)(d)~~ (d) “Racial/Ethnic Group” includes persons who are members of one of the following groups of people: American Indian/Native American, Asian, Black/African American, Filipino, Hispanic, Pacific Islander ~~and~~ or White. These groups are defined as follows:

(1) ~~“American Indian/Native American” means any person who is a member of an American Indian Tribe or band recognized by the Federal Bureau of Indian Affairs, or~~

~~has at least one-quarter American Indian blood quantum of tribes indigenous to the United States and Canada.~~

(1) "American Indian/Native American" means any person whose origin is any of the original peoples of North and South American (including peoples native to Alaska and Central America), and who maintain tribal affiliation or community attachment.

(2) "Asian" means any person whose origin is the Far East, Southeast Asia, or the Indian subcontinent and includes, for example, China, Japan, and Korea.

(3) "Black/African American" means any person whose origin is any of the Black racial groups of Africa.

(4) "Filipino" means any person whose origin is the Philippine Islands.

(5) "Hispanic" means any person whose origin is Mexico, Puerto Rico, Cuba, Spain, or the Spanish-speaking countries of Central or South America. It does not include persons of Portuguese or Brazilian origin, or persons who acquired a Spanish surname.

(6) "Pacific Islander" means any person whose origin is in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(7) "White" means any person whose origin is ~~Caucasoid~~ any of the original peoples of Europe, the Middle East, or North Africa.

(e) "Gender" means the identity of an individual as a member of either the male sex or the female sex consistent with Government Code Section 12926;

~~(e)(f)~~ "Occupational Group" means a group of jobs or classes that includes the entry-level, other working levels, and supervisory levels within the same general occupational field of work;

(g) "Outreach" means the efforts made to recruit qualified individuals into examinations for state civil service jobs;

~~(d)(h)~~ "Relevant Labor Force" means the pool of individuals who possess the requisite qualifications for the job within the geographic area in which the agency can reasonably expect to recruit;

~~(e)(i)~~ "Statistically Significant" means the degree of underutilization is equal to or greater than the .05 level of significance using the one-tailed Z Test method of statistical analysis outlined in Appendix 4 of the *Interim Guidelines for Conducting the Annual Analysis of the State Work Force Workforce (Guidelines)*, issued March 2002 by the State Personnel Board, as they currently read or as they subsequently may be amended. This document is hereby incorporated by reference in its entirety. Using this methodology, a computed Z value of 1.65 or greater is sufficient to conclude that any underutilization is statistically significant.

~~(f)(j)~~ "Underutilization" means having fewer persons of a particular group in an occupation or at a level in a department than would reasonably be expected by their availability the percentage available in the relevant labor force.

~~(g)(k)~~ "Work Force Workforce" means incumbents in full-time and other-than-full-time positions in the state civil service employed by the appointing authority power.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 18523, ~~19702.1~~, 19700-19706, and 19790-19799, ~~19791 and 19792~~, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; and "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," *Federal Register*, October 30, 1997; *Connerly v.*

State Personnel Bd. (2001) 92 Cal. App. 4th 16; and *Hazelwood School District v. United States* (1977), 433 U.S. 299, 308, fn. 14.

§ 547.801. The Annual Analysis of the State Workforce.

Each appointing power shall annually conduct an analysis of its agency or departmental workforce to determine if there is a statistically significant underutilization of a racial/ethnic or gender group that may indicate employment discrimination. Where statistically significant underutilization of a racial/ethnic or gender group is found, the appointing power shall analyze its employment practices to determine whether the underutilization is, in whole or in part, the result of illegal discrimination. The annual workforce analysis process shall be conducted in accordance with the Guidelines.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 12944-12951, 19702.1, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2 et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Connerly v. State Personnel Bd.*, 92 Cal. App. 4th 16 (2001).

§547.802. Remedial Action.

Whenever an appointing power identifies an unlawful discriminatory employment barrier causing underutilization of a group, it shall develop and implement a plan of action to correct or remove the barrier. Remedial actions may include, but not be limited to, the following:

- (a) Conducting a job analysis to ensure that the appropriate job-related knowledge, skills, and abilities are being tested;
- (b) Revising a class specification to remove non-job-related qualifications;
- (c) Revising a recruitment plan to modify or expand outreach efforts to ensure equal employment opportunity for all potential qualified applicants;
- (d) Revising or replacing examination material that unlawfully discriminates against a particular group of applicants;
- (e) Validating selection processes to ensure they do not unlawfully discriminate against any group of applicants;
- (f) Ensuring that examinations are administered by trained, technically competent staff;
- (g) Ensuring that non-discrimination policies are in place and that hiring managers and supervisors are aware of and follow them; and
- (h) Providing training to hiring managers and supervisors in diversity awareness and non-discrimination and reasonable accommodation employment law.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 12940-12951, 19702.1, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964, 42 USC, Sections 2000e-2

et seq.; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Hazelwood School District v. United States*, 433 U.S. 299 (1977); and *Connerly v. State Personnel Bd*, 92 Cal. App. 4th 16, (2001).

§ 547.803. Reporting and Record Keeping Requirements.

(a) By July 1st of each year, the appointing power shall submit to the board for review and approval a summary of the results of its work force analysis, identifying specific underutilization of racial/ethnic and gender groups in accordance with the Guidelines, a description of efforts to review employment practices, and an action plan for correcting or removing any unlawful employment barriers.

(b) Each appointing power shall maintain all records pertaining to its workforce analysis and action plans for a period of at least three years. Such information is public information, subject to inspection upon request.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 11092, 11092.5, 12940-12951, 19702.1, and 19790-19799, Government Code; Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), and *Hazelwood School District v. United States*, 433 U.S. 299 (1977).

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.7. Equal Employment Opportunity Program

Article 2. Employment Goals for Persons with Disabilities

§ 547.804. Analytical Requirements.

Each appointing power shall annually review its workforce to identify any underutilization of persons with disabilities that may be the result of employment discrimination and the need for establishing or modifying equal employment opportunity goals and timetables. The need for annual employment goals shall be determined as follows:

(a) Each appointing power shall compare the representation of employees with disabilities in its agency or departmental work force with the representation of persons with disabilities in the California civilian labor force, using data compiled by the U.S. Census Bureau or other source deemed appropriate by the board. Where the comparison indicates that agency or department representation is below 80 percent of California civilian labor force representation, there is an underutilization of persons with disabilities.

(b) Where there is an underutilization of persons with disabilities, the appointing power shall conduct a thorough review of its employment practices to determine whether illegal employment discrimination may be contributing to the underutilization. The review shall include, but not be limited to, the following factors:

(1) whether physical or mental requirements in class specifications have been validated;

(2) whether recruitment plans are inclusive and sensitive to the needs of persons with disabilities;

(3) whether entry examinations are nondiscriminatory, with no adverse impact against persons with disabilities as measured in accordance with Section 4 of the Federal Uniform Guidelines on Employees Selection Procedures, as it currently reads or as it may be amended hereafter;

(4) whether the hiring rate for persons with disabilities in entry classes is within 80 percent of their availability on employment lists;

(5) whether the promotional rate for persons with disabilities is within 80 percent of their availability on promotional eligible lists;

(6) whether the agency or department has a disability advisory committee that monitors employment practices and advises the director on issues concerning employees with disabilities;

(7) whether the agency or department has appointed persons with disabilities through the Limited Examination and Appointment Program in the last three years;

(8) whether the agency or department has surveyed its employees within the last five years to update information on the number of employees with disabilities;

(9) whether the agency or department has a written reasonable accommodation policy which has been distributed to its employees;

(10) whether the department or agency has timely responded to the requests for reasonable accommodation that it has received;

(11) whether the department or agency has received adverse decisions from enforcement agencies in discrimination complaints based on disability and appeals from the denial of reasonable accommodation;

(12) whether the agency or department has completed a self evaluation of its employment practices and services to the public and a transition plan for improving accessibility for persons with disabilities as required by Department of Justice Regulations implementing Title II of the Americans with Disabilities Act of 1990.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12940, and 19230-19237, Government Code; "Uniform Guidelines on Employee Selection" (1978) [29 CFR 1607-1607.18]; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.805. Establishing an Employment Goal and Timetable.

(a) In establishing an employment goal for persons with disabilities, the following definitions apply:

(1) "Goal" means a projected number of appointments determined by an analysis by the appointing power of its deficiencies, the anticipated number of job openings, and the availability of qualified persons with disabilities on employment lists.

(2) "Timetable" means an estimate of the time required to meet a specific goal.

(b) When the representation of persons with disabilities in an agency or department is below 80 percent of civilian labor force representation and the appointing power concludes from its analysis that it has not met all criteria in Section 547.804(b) to eliminate the underutilization of persons with disabilities, the appointing power shall establish an employment goal for persons with disabilities in its department or agency, and develop an action plan and a timetable for achieving the goal. The goal, timetable, and action plan shall be submitted to the board for approval by July 1st each year.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12940, and 19230-19237, Government Code; "Uniform Guidelines on Employee Selection" (1978) [29 CFR 1607-1607.18]; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.806 Employee Disability Information.

At least once every five years, each appointing power shall conduct a survey to update information on the number of its employees with disabilities. Surveys shall be conducted using the *State Employee Disability Questionnaire* in its current form or as it may be revised hereafter. All disability information shall be gathered from employees on a voluntary basis and submitted to the board in sealed envelopes. Information shall be held strictly confidential and used solely for statistical and research purposes to

monitor and advance equal employment opportunity and nondiscrimination. No survey information on individual employees shall be retained by the appointing power.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12926, 12926.1, 12940-12951 and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.7. Equal Employment Opportunity Program

Article 3. Discrimination Complaint Process

§ 547.807. Non-discrimination Policy Statement.

Each appointing power shall issue to each new employee upon appointment a written policy statement affirming its commitment to equal employment opportunity and non-discriminatory employment. The policy statement shall be reissued to each employee at least every three years thereafter, or continuously posted on the appointing power's Internet Web site.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19700-19706, Government Code.

§ 547.808. Right to File a Discrimination Complaint.

(a) Any state civil service employee or applicant for state civil service employment who believes that he or she has been subjected to unlawful discrimination on the basis of his or her race, color, ancestry, national origin, sex, marital status, age, religious creed or opinion, political affiliation or opinion, sexual orientation, medical condition, or mental or physical disability in an appointment, promotion, transfer, assignment, evaluation, disciplinary action, or other term, condition or privilege in state employment may file a discrimination complaint with the appointing power and may file an appeal with the board from the appointing power's response.

(b) Any state civil service employee or applicant for state civil service employment who believes that he or she has been subjected to illegal retaliation for opposing any practice made an unlawful employment practice or making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing before the board may file a discrimination complaint with the appointing power and may file an appeal with the board from the appointing power's response.

(c) A state civil service employee or an applicant for state civil service employment may file an appeal directly with the board without first having to file a discrimination complaint with the appointing power if the employee or applicant can show that filing a discrimination complaint with the appointing power would be futile. Circumstances in which futility can be found include, but are not limited to, those where the remedy sought is outside the authority of the appointing power to grant, and those where the appointing power, or members of his or her executive staff are named in the appeal.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, 18500(c)(5), and 19700-19706, Government Code.

§ 547.809. Appointing Power Discrimination Complaint Process.

Each appointing power shall establish a written internal discrimination complaint process pursuant to which a complainant may file a discrimination complaint. The appointing power's internal discrimination complaint process shall be subject to the review and approval of the Board's Executive Officer when first developed and whenever substantially revised thereafter, and shall:

(a) Provide to every complainant an opportunity to resolve a discrimination complaint with a minimum of formal procedural requirements;

(b) Include the opportunity for the complainant to receive counseling by an individual who is qualified to give counseling in matters pertaining to discrimination;

(c) Include other options for informal resolution including, but not limited to, the opportunity for the complainant to participate in board-sponsored mediation;

(d) Assure that no influence will be used to dissuade a complainant from filing a complaint, no complaint will be suppressed, and no individual will be subject to reprisal for filing a complaint or participating in the complaint process;

(e) Make available to a complainant, upon written request, any statistical or other records that are subject to disclosure under the California Public Records Act, beginning at Government Code Section 6250, or the Information Practices Act, beginning at Civil Code Section 1798. A written request must clearly identify the information sought and the time period for which the information is sought; and

(f) Assure that the complainant's complaint receives timely and full consideration at each level of review, that an investigation into the circumstances surrounding the complaint is performed by qualified and impartial persons, and that the complainant will be informed of appeal rights he or she may possess at each step of the complaint process, including the right of appeal to the Board, or to file a complaint with an appropriate state or federal agency having jurisdiction.

The appointing power shall provide a written copy of its internal discrimination complaint process to all employees when first employed and every three years thereafter, or shall post the process continuously on its Internet Web site.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

§ 547.810 Equal Employment Opportunity Counselors and Investigators.

(a) Each appointing power shall appoint an adequate number of equal employment opportunity counselors and investigators to meet all its legal obligations to counsel, investigate and resolve applicant or employee discrimination complaints in a thorough and timely manner. In determining the number of counselors and investigators needed, the appointing power shall give consideration to the number of its employees, the number and geographic location of its facilities, and its past history of discrimination complaint activity.

(b) Each appointing power shall ensure that all employees assigned to provide discrimination complaint counseling, to investigate alleged acts of discrimination, and to resolve discrimination complaints are adequately trained and qualified to perform these functions. Following initial training, each counselor and investigator shall receive

additional training at least every three years to update his/her knowledge and keep current his/her ability to perform the required duties.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

§ 547.811 Informal Discrimination Complaint Process.

In accordance with Section 547.809, state employees may, on a voluntary basis, meet with an equal employment opportunity counselor informally to discuss and seek assistance in resolving their discrimination concerns. Counselors shall provide employees with information about the discrimination complaint process and options for resolving complaints. In addition, counselors may, with the consent of the employee, attempt to resolve discrimination concerns before the employee files a formal written complaint. Each appointing power shall prominently post, in each departmental facility and on its Internet Web site, the names and telephone numbers of departmental equal employment opportunity counselors.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

§ 547.812 Requirements for Filing a Formal Discrimination Complaint with the Appointing Power.

(a) *Contents*: Each discrimination complaint filed with the appointing power shall be in writing and shall state, with particularity, the facts upon which the complaint is based. The complaint should include the protected group(s) to which the complainant belongs, the nature of the alleged discriminatory and/or retaliatory action, the names and titles of persons who committed or were involved in the alleged discriminatory and/or retaliatory action, the information that the complainant possesses that shows that the complainant's protected status was a factor in the discriminatory and/or retaliatory action that was taken, and the relief and/or remedy the complainant seeks.

(b) *Limitations*: The alleged discriminatory and/or retaliatory action upon which the complaint is based must have occurred no more than one year prior to the date that the complaint is filed with the appointing power. This period may be extended by not more than 90 days in those cases where the complainant first obtained knowledge of the facts of the alleged discrimination and/or retaliation after the expiration of the one-year limitation period from the date of its occurrence.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

§ 547.813 Response of the Appointing Power to a Formal Discrimination Complaint.

(a) *Appointing Power's Response:* Within 30 days after the appointing power receives a discrimination complaint, the appointing power shall provide the applicant or employee with a written response. The written response shall include detailed findings of fact that support the appointing power's decision. If the appointing power desires more time to gather additional information and/or participate in board-sponsored mediation before issuing a decision in its written response, the appointing power may request from the applicant or employee an extension of time. The appointing power's response shall inform the applicant or employee of his or her right to file an appeal with the board.

(b) *Applicant's or Employee's Reply:* If an appointing power's response includes a request for an extension of time for responding to a discrimination complaint, the applicant or employee shall reply in writing within 10 days after receipt of the response. If the employee or applicant denies the appointing power's request for an extension of time, the appointing power's response shall be deemed to be a denial of the employee's or applicant's discrimination complaint.

NOTE: Authority cited: Section 18701, Government Code.
Reference: Sections 19700-19706, Government Code.

§ 547.814 Requirements for Filing Discrimination Appeals with the Board.

(a) *Limitations:* Within 30 days after receipt of an appointing power's response to a discrimination complaint, the applicant or the employee may file an appeal with the board. If the appointing power fails to respond in writing within 30 days after receipt of the applicant's or employee's discrimination complaint, the applicant or employee may file an appeal with the board within 30 days after the 30-day response period has expired. If the applicant or employee grants the appointing power an extension of time within which to respond, the applicant or employee may file an appeal with the board within 30 days after the extension period has expired.

(b) *Content:* All appeals filed with the board shall be in writing and shall include a copy of the appellant's discrimination complaint filed with the appointing power, together with a copy of the appointing power's response, if any. If the appointing power did not provide the appellant with a written response within the time periods set forth in Section 547.813, the appellant shall so state in his or her appeal filed with the board. If the appellant did not file a discrimination complaint with his or her appointing power because the appellant believed that it would be futile to have done so, the appellant must include information supporting his or her belief.

(c) *Relief Requested:* The appeal shall specify the relief and/or remedies, including any compensatory damages sought.

(d) *Request to File Charges:* If the appellant seeks to file adverse action charges against any individual respondent, for having engaged in unlawful discrimination, pursuant to the provisions of Government Code Section 19583.5 and Board Rule 51.9, the appeal must state the facts constituting the cause or causes for adverse action in

such detail as is reasonably necessary to enable the individual respondent to prepare a defense thereto. Where it does not appear that the material facts alleged are within the personal knowledge of the appellant, the appellant may be required to present supporting affidavits from persons having actual knowledge of the facts before the board acts upon the request for adverse action. Any failure to comply with the provisions of this section shall constitute a waiver on the part of the appellant to subsequently seek adverse action against any individual respondent for unlawful discrimination.

(e) Review: The board shall review each appeal to determine whether it should be referred to an administrative law judge for evidentiary hearing.

(f) Discovery: If an appeal is referred for evidentiary hearing, the discovery provisions set forth in Sections 57.1-57.3 shall apply.

(g) Affirmative Defenses: Appellants may raise affirmative defenses of discrimination and/or retaliation in appeals from adverse action, rejection during probation, medical termination, demotion, or transfer, and non-punitive termination, demotion, or transfer without first having to file a discrimination and/or retaliation complaint or appeal in accordance with this section.

NOTE: Authority cited: Sections 18701 and 19702(g), Government Code.
Reference: Sections 12940-12951, and 19700-19706, Government Code.

§ 547.815 Quarterly Reporting of Discrimination Complaint Activity.

(a) Each appointing power shall report to the Board, on at least a quarterly basis, the following discrimination complaint activity:

(1) the number of informal discrimination complaints reported to the appointing power;

(2) the number of formal discrimination complaints filed with the appointing power, the Department of Fair Employment and Housing, and/or the U.S. Equal Employment Opportunity Commission;

(3) the number of discrimination complaint grievances filed with the appointing power;

(4) the number of management-initiated discrimination inquiries; and

(5) the number of employment discrimination lawsuits being litigated by the appointing power.

(b) When reporting to the board, the appointing power shall include the following information:

(1) the name of the complainant or grievant;

(2) the job classification and work location of the complainant or grievant;

(3) the protected basis on which the complaint or grievance was based;

(4) the nature of the complaint or grievance (i.e., issue);

(5) the disposition of the complaint or grievance;

(6) the remedy, if any, provided to the complainant or grievant;

(7) the action taken, if any, against any persons found to have engaged in illegal discrimination; and

(8) the amount of staff resources and the costs expended by the appointing power on discrimination complaint and litigation activities, including but not limited to counseling employees, investigating complaints, witness testimony, responding to complaints and appeals, legal preparation and review, legal settlements or court awards, court costs, and attorney fees. The appointing power shall establish tracking systems to compile complete and accurate information.

(c) The board shall annually summarize discrimination complaint information reported by agencies and submit a report to the Legislature in accordance with Government Code § 19702.5(c).

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 19700-19706, Government Code.

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1.7. Equal Employment Opportunity Program

Article 4. Reasonable Accommodation

§ 547.816. Reasonable Accommodation Policy.

It is the policy of the state to remove artificial employment barriers and to provide reasonable accommodation to facilitate the employment of qualified individuals with disabilities in the state civil service. In accordance with Section 547.817, a qualified applicant or employee with a disability may request from an appointing power a reasonable accommodation in order to complete a selection process or perform the essential functions of a desired or occupied position and may appeal to the board from the appointing power's denial, in whole or in part, of such request or failure to respond in a timely fashion in accordance with the regulations set forth in this article.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.817. Reasonable Accommodations Procedures.

Pursuant to Government Code Section 19230, each appointing power shall develop and issue to all new employees upon appointment written procedures for submitting requests for reasonable accommodation, and shall reissue such procedures every three years or post such procedures and updates on a continuous basis on its Internet Web site.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.818 Reasonable Accommodation Coordinator.

Each appointing power shall appoint a reasonable accommodation coordinator, who is knowledgeable about the legal requirements of and options for reasonable accommodation, to coordinate the processing and evaluation of employee reasonable accommodation requests. The reasonable accommodation coordinator shall consult with the appointing power's equal employment opportunity officer before a decision on a reasonable accommodation request is issued.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.819. The Departmental Reasonable Accommodation Process.

(a) *Request for Reasonable Accommodation:* A qualified applicant or employee with a disability who desires a reasonable accommodation to complete a selection process or perform the essential functions of a position may file a written request with the appointing power. Each request shall:

- (1) explain the reasons for the request;
- (2) state the facts upon which the request is based;
- (3) describe the requested accommodation(s);
- (4) include documentation from a physician or other health care professional to support the request, if available.

(b) *Interactive Process:* Within 7 days after receiving a request for reasonable accommodation, the appointing power shall initiate a good faith interactive process with the applicant or employee. During the interactive process, the appointing power shall at a minimum:

- (1) Discuss the purpose and the essential functions of the particular position involved;
- (2) Consult with the applicant or employee to ascertain the precise job-related functional limitations imposed by the disability and how those limitations could be overcome with a reasonable accommodation;
- (3) In consultation with the applicant or employee, identify potential accommodations and assess the effectiveness each would have in enabling the applicant or employee to complete the selection process or perform the essential functions of the position; and
- (4) Considering the accommodation preferences of the applicant or employee, select and implement a reasonable accommodation that is most appropriate for both the applicant or employee and the appointing power.
- (5) Keep the applicant or employee informed about the status of his or her request until an appropriate accommodation is provided or the request for accommodation is denied.

(c) *Medical and Psychological Inquiries:* During the interactive process, in order to respond to a request for reasonable accommodation, the appointing power may make medical and psychological inquiries and require medical and psychological examinations in accordance with Government Code Section 19253.5(a), the Fair Employment and Housing Act [Government Code § 12940, subsections (e) and (f)] and the Confidentiality of Medical Information Act, Civil Code Section 56 et seq. that are job-related and consistent with business necessity. Failure of the applicant or employee to respond to such inquiries and comply with such examinations on a timely basis may result in the appointing power denying the request for reasonable accommodation.

(d) *Appointing Power's Response:* Within 20 days after the appointing power receives a request for reasonable accommodation, the appointing power shall provide the applicant or employee with a written response. The written response shall include findings of fact that support the appointing power's decision. If the appointing power desires more time to gather additional information, obtain responses to medical or

psychological inquires or examinations, engage in the interactive process, and/or participate in board sponsored mediation before issuing a decision, the appointing power may request from the applicant or employee an extension of time in its written response. The appointing power's response shall inform the applicant or employee of his or her right to file an appeal with the board.

(e) *Applicant's or Employee's Reply*: If an appointing power's response includes a request for an extension of time, the applicant or employee shall reply in writing within 10 days after receipt of the response. If the employee or applicant fails to respond within 10 days or denies the appointing power's request for an extension of time, the appointing power's response shall be deemed to be a denial of the applicant's or employee's request for reasonable accommodation.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

§ 547.8191 Requirements for Filing Reasonable Accommodation Appeals with the Board.

(a) *Limitations*: Within 30 days after receipt of the appointing power's response to a reasonable accommodation request, the applicant or employee may file an appeal with the board. If the appointing power fails to respond in writing within 20 days after receipt of the applicant's or employee's reasonable accommodation request, the applicant or employee may file an appeal with the board within 30 days after the 20-day response period has expired. If the applicant or employee has granted the appointing power an extension of time within which to respond, the applicant or employee may file an appeal with the board within 30 days after the extension period has expired.

(b) *Content*: All appeals filed with the board shall be in writing and shall include a copy of the appellant's request for reasonable accommodation filed with the appointing power, together with a copy of the appointing power's response, if any. If the appointing power did not provide the appellant with a written response to the appellant's reasonable accommodation request, within the time periods set forth in Section 547.817, the appellant shall so state in his or her appeal filed with the board.

(c) *Review*: The board shall review each appeal to determine whether it should be referred to an administrative law judge for evidentiary hearing.

(d) *Discovery*: If an appeal is referred for evidentiary hearing, the discovery provisions set forth in Sections 57.1-57.3 shall apply.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections 12940-12951, and 19230-19237, Government Code; and Federal Public Health and Welfare Code, Title 42, Chapter 126, Sections 12101-12117 (Americans with Disabilities Act of 1990 [ADA]).

TITLE 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 1. General Civil Service Regulations

Article 4. Hearings and Appeals

~~§ 53.2. Reasonable Accommodation Appeals.~~

~~Requests for reasonable accommodation are requests from qualified disabled individuals for accommodation to known physical or mental limitations. These requests may be made concerning securing, retaining or advancing in employment in State service. Appointing authorities shall respond to such requests within 20 days of receipt. Appointing authorities shall respond in writing and inform complainants of their right of appeal to the board, within 30 days of receipt of the department's response. Failure to respond to a request within 20 days shall be deemed a denial of the request by the appointing authority and shall release the complainant to file an appeal directly with the board. Such filing shall be done within 30 days of the exhaustion of the 20-day period.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Sections 12940, 18675, 18952, 19701, 19702, 19230, 19231, Government Code.~~

(Provisions incorporated into proposed new CCR § 547.817)

~~§ 54. Discrimination Complaint Process.~~

~~Any person who believes that he or she has been discriminated against in state employment in violation of part II, chapter 10, article 2 of the Government Code, the Federal Age Discrimination in Employment Act of 1978, or Governor's Executive Order B-54-79, shall have the opportunity to file a complaint with the board. Complaints filed with the board shall follow provisions of article 4 and the specific provisions of Sections 54.1 and 54.2. All issues arising under these regulations, if not resolved under the process prescribed hereunder or by Sections 53.2, shall be decided by the board, if the complainant so requests.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Sections 19700, 19701, 19702, 19702.1, 19702.2, 19702.5, 19703, 19704 and 19705, Government Code.~~

(Provisions incorporated into proposed new CCR § 547.808)

~~§ 54.2 Discrimination Complaint Standards for Appointing Powers.~~

~~Each appointing power discrimination complaint review shall:~~

~~(a) Provide for satisfying the complaint with a minimum of formal procedural requirements, by an organizational level closest to the employee concerned. Such provisions shall include the opportunity for the employee to receive counseling on a confidential basis by an employee who is qualified to give counseling in matters pertaining to discrimination.~~

~~(b) Assure that no influence will be used to dissuade the employee from airing a complaint, that no complaint will be suppressed, nor will an employee be subject to reprisal for voicing a complaint or participating in the complaint procedure.~~

~~(c) Assure that the employee's complaint will receive preferred, timely and full consideration at each level of review, that investigation into the circumstances surrounding the complaint will be performed by qualified and impartial persons, and that the employee will be informed of all rights at each step of the process, including the right of appeal to the board or to file with the appropriate state or federal agency or court having jurisdiction.~~

~~NOTE: Authority: Section 18701, Government Code.~~

~~Reference: Section 18675, Government Code.~~

(Provisions incorporated into proposed new CCR § 547.809)